IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.1165 OF 2004

Maharashtra State Road Transport Corporation).. Petitioner

Versus

Ayub Akbar Mulani).. Respondent

Mr.G.S.Hegde for the Petitioner.

Mr.Uday Walunjikar for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 13TH AUGUST 2004

P.C.:

. This Writ Petition has been filed against an order of the Industrial Court passed in a Review Application filed by the Respondent. The Industrial Court has reviewed its own order under which it had earlier allowed the Revision and set aside the order of the Labour Court. By the impugned order, the Industrial Court remanded the Complaint to the trial Court i.e. the Labour Court for disposing of the matter on merits, afresh, within two months. The Petitioner Corporation has impugned this order.

2. The facts in the present case are not in dispute. The Respondent committed an accident while driving a bus owned by the Corporation on 15th January 1994. One

person died and another was injured in this accident. After an inquiry was held, the Respondent was dismissed from service on 1st October 1994. The Respondent challenged his dismissal by filing Complaint (ULP) No.61 of 1994 under Item 1 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "MRTU & PULP Act"). Pursuant to an interim order of 21st January 1999, the Petitioner reinstated the Respondent workman. The Labour Court by its order dated 22nd March 2000, held that the Petitioner had committed an unfair labour practice under Item 1 of Schedule IV. It, therefore, directed the Petitioner to reinstate the workman in service with continuity of service and full back wages till the date of retirement of the Respondent which was 31st May 1999.

3. Being aggrieved by this order, the Corporation filed a Revision Application before the Industrial Court under Section 44 of the MRTU & PULP Act. This Revision Application was allowed as the Industrial Court was of the view that the Labour Court had not appreciated the evidence in the right perspective and because the findings of the Labour Court were perverse. However, instead of remanding the matter to the Labour Court for adjudicating it afresh, the Industrial Court was of the view that the dismissal being on 1st October 1994, it

would be in the interest of justice if the Industrial Court itself considers the evidence on record and arrived at a proper conclusion. Taking note of the evidence on record and the findings of the Enquiry Officer, the Industrial Court held that the misconduct had been proved against the Respondent and, therefore, the order of the Labour Court was set aside.

4. After this order was passed by the Industrial Court on 14th August 2001, the Respondent filed a Review Application being Review Application (ULP) No.2 of 2001 for review of the order of the Industrial Court dated 14th August 2001. The Industrial Court came to the conclusion that it could review the earlier order. The Industrial Court then held that earlier order passed by another Member was erroneous as the matter should have been remanded for trial afresh before the Labour Court. According to the Industrial Court, the powers under Section 44 are limited and hence the Industrial Court could not have re-appreciated the evidence and draw a different conclusion. The Industrial Court was of the view thatwhen the earlier findings recorded by the Member of the Industrial Court showed that the Labour Court had arrived at a perverse conclusion, the Labour Court ought to have decided the matter afresh, on remand, rather than the Industrial Court.

5. Prima facie, a Review Application does not lie against an order passed by a competent Court under the MRTU & PULP ACT. Mr.Uday Walunjikar, the learned for the Respondent, relies on the judgment of this Court in the case of *Association of Engineering Workers, Mumbai* vs. *A.T.V. Limited, Mumbai and another*, **2002 (2) Mh.L.J. 419**, where a learned Single Judge of this Court has held that a Review Application is maintainable. Various judgments have been cited by both Mr.Hegde and Mr.Walunjikar in support of their submission as to whether a review lies against an order passed by the Industrial Court under the MRTU & PULP Act.

6. After hearing the learned Advocates for some time, I am of the view that it would be in the interest of justice if the matter is disposed of finally at this stage. The Respondent workman has already retired from service on 31st May 1999. He is now 65 years of age. In my view, it would not be in the interest of justice to decide the issue of law as to whether a review is maintainable and prolong the case.

7. After considering the orders of the Courts below, in my view, interest of justice would be met if the Respondent is deemed to have been in service continuously upto the date of his superannuation on 31st May 1999 for the purposes of payment of gratuity, provident fund and

any other retiral benefits. However, back wages would not be payable to the Respondent workman. The amount which the Respondent has earned while working pursuant to the interim order passed by the Industrial Court from the period 21st January 1999 to 31st May 1999, shall not be recovered from the Respondent workman nor will it be adjusted against any payment due and payable to him.

8. The orders of the Courts below are accordingly modified to the above extent. Writ Petition disposed of accordingly. No order as to costs.

9. Parties to act on an authenticated copy of this order.